

CITY OF ROCHESTER
Planning Board
Monday November 1, 2010
City Council Chambers
31 Wakefield Street, Rochester, NH 03867
(Approved on November 15, 2010)

Members Present

Tim Fontneau, *Chair*
Nel Sylvain, *Vice Chair*
Derek Peters, *Secretary*
Tom Abbott
Rick Healey
Gloria Larochele
John Meader

Alternate Members Present

James Gray
Dave Walker

Alternate Members Absent

Stephen Martineau (*excused*)

Staff: Michael Behrendt, Chief Planner
Marcia J. Gasses, Planning Secretary

(These minutes are the legal record of the meeting and are in the format of an overview of the meeting. It is neither represented nor intended to be a true transcription of the meeting. A recording of the meeting will be on file in the City Clerk's office for reference purposes. It may be copied for a fee.)

Mr. Fontneau called the meeting to order at 7:00 p.m. The planning secretary conducted roll call.

Mr. Gray to vote for the vacant seat

Dave Walker as Council Representative

Communications from the Chair

Mr. Fontneau discussed with the board and informed the audience that there were certain norms that should be observed during the meeting and that personalities should be kept out of the discussions.

Mr. Abbott requested that item VII E., be moved up in the agenda.

Mr. Fontneau agreed and there were no objections from board members.

Approval of the minutes for October 18, 2010

A motion was made by Mr. Walker and seconded by Mr. Gray to approve the October 18, 2010 minutes as written. The motion carried unanimously.

New Applications

- E. Albert and Patricia Dumont, Old Dover Road.** Application for issuance of a building permit for a new house on vacant lot accessed via a private road, pursuant to RSA 674:41 I. (d). Map 215, Lot 27

Albert Dumont addressed the board. He is seeking the issuance of a building permit on a private road.

Mr. Peters asked if there is one house or two on the private drive and if they would need a street name.

Mr. Behrendt said he would ask MIS and will clarify before the issuance of a building permit.

A motion was made by Mr. Walker and seconded by Mr. Abbott for a formal recommendation to the Council for the issuance of a building permit. The motion carried unanimously.

Continued Applications

D.S. & B.R. Winson Trust, 7 Stewart Court & Chasse Street (by Norway Plains Associates). Lot line revision. Case # 122-2 & 122-10-R1-10

Art Nickless of Norway Plains Associates explained it was his understanding that Dan Wensley has not responded to the questions posed by Mr. Behrendt but it is the boards wish to move forward on this. The plan deals with issues that were decided upon prior to this application. There is the easement to the city for road width, and for access to the cemetery.

Mr. Nickless wished to propose removing some of the items that were listed on the proposed NOD. Item 1b), clarify who the beneficiary is for the cemetery access easement, 2a), "Creation of this plan is driven in part by a Stipulation by the Superior Court of New Hampshire, under Docket No. 02-E-0214-Winson V Chadbourne and City of Rochester, 2e), the owner of lot 122-11/beneficiary of the easement to the cemetery concurs with the placement of the easement

shown on this plan, and 4), obtain a signed statement from the owner of lot 122-11/beneficiary of the easement to the cemetery that the easement shown is acceptable.

Mr. Nickless discussed the sign-offs. It does not make sense to get one signature of a beneficiary of the easement without getting all of them and that could be very difficult, requiring research into the families of every person buried in the cemetery. The City is the beneficiary to the easement and they will maintain the cemetery.

Mr. Sylvain asked how long Attorney Wensley has had this and should we move on this tonight.

Mr. Behrendt explained that the Mr. Wensley has had this item for 5-6 weeks. He sees no problem with moving on this.

Mr. Healey questioned the 16.5 feet being stipulated by the court.

Mr. Nickless explained that the parties involved have agreed to the 10 foot width. The Winsons just want to clear this up. If the board is uncomfortable taking anything out, his client is willing to wait.

Mr. Healey would like “no barriers within the easement area” to be part of the language.

Mr. Fontneau feels that all three parties have agreed and he does not see a reason to hold this up any longer.

A motion was made by Mr. Sylvain and seconded by Mr. Walker to approve the application with the deletion of 1b, 2a, 2e, 4, from the proposed conditions of approval and the addition of “no obstruction shall be placed within the 10 foot right of way and access to 122-2 must come from Chasse Street. The motion carried unanimously.

New Applications

- A. Glenn and Pamela Doyle, 268 Lowell Street** (by David Vincent Land Surveying Services). 2-lot subdivision. Case # 254-16-A-10

David Vincent representing the applicant explained that the application subdivision of a lot located on Lowell Street and Peasley Road which contains 14.2 acres. The lot is proposed to be divided in two with the new lot containing approximately 8 acres and the original lot retaining 6.2 acres. Wetlands have been flagged and the wetlands will be subject to a 50’ buffer. Test pits were done on 16-1 and the lot will be served by a private well.

Mr. Healey wanted to know if the circular driveway will be closed off.

Mr. Vincent stated that the driveways will be separate with no easement overlay.

Mr. Behrendt wanted the following changes made to the plans, 1C should be eliminated. Add, “to show upland on each lot”. Under 2, the three wetlands connected by drain pipes are considered as one wetland and are subject to the Conservation Overlay District.

Mr. Healey wanted to know if the pipes were still working.

Mr. Vincent explained that the pipes are working and that they are not clogged.

A motion was made by Mr. Peters and seconded by Mr. Gray to accept the application as complete. The motion carried unanimously.

Mr. Fontneau opened the public hearing.

A motion was made by Mr. Sylvain and seconded by Mr. Walker to close the public hearing. The motion carried unanimously.

A motion was made by Mr. Gray and seconded by Ms. Larochelle to approve the application. The motion carried unanimously.

B. Alan and Sandra Provencher, 8 Mandela Drive. Site plan to establish a family daycare to care for six preschool and three school age children. Case # 240-67-R1-10

Sandra Provencher the applicant explained she was seeking permission to operate a home daycare.

Mr. Sylvain asked if the applicant had received her license.

Ms. Provencher explained that they can’t get licensed until they get the zoning approval.

A motion was made by Mr. Peters and seconded by Mr. Gray to accept the application. The motion carried unanimously.

Mr. Fontneau opened the public hearing.

Andrea Bartoszak spoke in favor of the application. Ms. Bartoszak has four children and feels this would be an asset to the community.

A motion was made by Mr. Walker and seconded by Mr. Peters to close the public hearing. The motion carried unanimously.

Mr. Peters asked if she would be having any employees.

Ms. Provencher stated no, it would just be herself.

Mr. Provencher told the board he has been trying for two months to get this straightened out. He has not received his final approval from the Fire Department for the smoke detectors he was required to replace.

Mr. Peters asked if Mr. Behrendt would look into this.

A motion was made by Mr. Gray and seconded by Mr. Peters to approve the application. The motion carried unanimously.

C. Poulin Realty Acquisitions/ Ron Poulin, 47 Farmington Road (by Norway Plains Associates). Site plan to construct a facility containing a tire sales and service, drive up coffee shop and car rental. Case # 216-25-B2/A-10

Art Nickless of Norway Plains Associates representing the applicant explained that the majority of the project would be the eight bay tire sales and service. In addition there would be a coffee kiosk by Aroma Joes and an Enterprise car rental. The applicant anticipates there will be 15-20 employees. The project is located next to the Harley Davidson business.

The site slopes toward the back of the lot and the office area will be located in the front of the building, they have tried to work the slopes into the layout of the building. In addition the lot is located in the Aquifer Protection Zone.

The applicant has been working with NHDOT. They are looking for shoulder widening on the east side of the road, widening the shoulder from 4' to 10' but NHDOT is not asking for a turning lane.

Mr. Walker asked if the site would be connected to the adjacent Harley Davidson site.

Mr. Nickless stated, not at this time. There is a grade difference and some fill will need to be brought onto the site.

Mr. Sylvain questioned whether the dumpster would be surrounded by a standard wood stockade fence as depicted on the plans. He would like to see a chain link fence.

Mr. Abbott needs to see a "no parking" sign in the access aisle.

A motion was made by Mr. Peters and seconded by Mr. Gray to accept the application as complete. The motion carried unanimously.

Mr. Fontneau opened the public hearing.

No one spoke.

A motion was made by Mr. Walker and seconded by Mr. Sylvain to close the public hearing. The motion carried unanimously.

Mr. Nickless explained the applicant is anxious to break ground and would like to have the store open in March or early April. They would like to have approval this evening if possible.

Mr. Healey stated it is on the agenda for the Cochecho River Advisory Board on November 10th.

Mr. Behrendt explained that this application is being treated as a new application; he has no sign-offs for this project and is not prepared for approval tonight. There had been discussion with Norway Plains that they were shooting for final action on November 15th.

Mr. Peters asked if the application has been before the TRG.

Mr. Behrendt stated it has been before the TRG twice. Additional materials came in after the first TRG meeting and additional time is needed to review the information.

Mr. Peters stated that we need to make sure that we have all the sign-offs by November 15th.

Mr. Sylvain expressed that four weeks should be long enough for the departments to review and he doesn't see why we don't have the sign-offs.

Mr. Fontneau expressed that they are leaving with the blessing of the board as no one is asking for any changes.

Mr. Abbott explained to Mr. Nickless that if he got the building plans to him he could have them reviewed in 7-10 days.

Ms. Larochelle explained that she was at the TRG last Tuesday when the application was reviewed and it was her understanding they were shooting for a November 15th approval.

Mr. Nickless expressed that he understood why it took time to obtain the sign-offs. The project has to be pretty much done before DPW can sign-off.

This item was continued to November 15th.

D. Audrey J. Demichele Living Trust and Suzan J. Beals Living Trust, 2 Dartmouth Lane (by Norway Plains Associates). New application for 2-lot subdivision. The original application was denied by the Planning Board on October 4. The proposed lot has been square off. Case # 126-42-R1-10

Mr. Fontneau explained to the board that this is a new application for a two lot subdivision.

James Shulte an Attorney from Dover representing the applicants told the board there was a stated preference from a number of members requesting the lots be squared up. The lots meet all of the zoning requirements.

The original subdivision was recorded in 1940. Over the years a number of the lots have changed in size. The neighborhood contained a variety of lot sizes when it was laid out. There is a variety of home designs. It is a mixed and well designed neighborhood. The minimum lot size is 10,000 square feet and we are proposing 15, 000 square feet.

One of the proposals by Mr. Behrendt was for only allowing a two story home but we found a number of homes with single floors.

It was also proposed for a home with minimum of 2,000 square feet of living space but more than half of the existing homes in the neighborhood are less than 2,000 square feet. Given the findings the applicant did not feel the restriction necessary.

Mr. Sylvain does not believe the homes except those on Hillcrest are 1200 square feet and he has issues with anything that is not in black and white. The homes built in that neighborhood are of quality and he does not want to see a low end modular built.

Mr. Shulte gave some statistics regarding the size of the homes in the neighborhood. The minimum size of a home on Dartmouth is 1540 square feet, on Edgewood they range from 1400 to 2000 square feet, Hillcrest 1100 square feet and Sunset 1940 square feet.

They have had lot line adjustments in the past. There are a few lots that have been subdivided in the past. Many of the homes are centered on the lots and very few can be subdivided.

Mr. Peters questioned whether the protective covenants lasted for 20 years.

Mr. Shulte read paragraph "H" from the covenants.

Mr. Shulte stated that even if the covenants were in affect this subdivision does not conflict.

Mr. Nickless explained he had put together a tax map that shows there is 80 feet of width between side setbacks for the construction of a home on the proposed lot. The closest the home would be to the existing Demichele home is 47 feet and any of the abutting homes is 92 feet. The other houses in the neighborhood vary from as little 25-49 feet from abutting homes to 70-80 feet. The home to be built on the proposed lot would definitely be within this range.

The shed will be removed or moved. The applicants have agreed to a 40 foot front set back, which is more than others but will be in line with those on Sunset Drive. There will be 95 feet of depth and 84 feet of width to build a house.

Ms. Larochelle pointed out some discrepancies with the stated size of some of the lots.

A discussion ensued and it was determined the numbers came from tax maps which were inaccurate.

Mr. Fontneau asked the board, do we think there has been a significant change. There was concern that if the lines had been drawn different they would have been all right.

Mr. Behrendt explained that when an application is denied it is denied, you can not just resubmit the same thing. If the application is only submitted with a minor change than it should be rejected by the board but if there is a material change, the board has the option of reviewing the application as a new application. The applicant would have to pay all fees and abutters would have to be notified.

Mr. Behrendt feels that the applicant has done this and that the changing of the “L” shaped lot is a material change and the board should consider this application worthy of review as a new application. He recommends approval of the application as stated in the staff recommendations.

Mr. Fontneau asked Mr. Behrendt if we had everything necessary to accept this application as complete.

Mr. Behrendt responded yes.

A motion was made by Mr. Walker and seconded by Mr. Healey to accept the new application as complete. The motion carried unanimously.

Mr. Fontneau opened the public hearing.

Tony Corraire who lives on Edgewood Lane was before the board for a clarification. If the board has voted to accept the application as a new application and complete there should have been a determination first on whether there had been a substantial change.

Mr. Fontneau stated the reason he did not do that was because he wanted to give the abutters an opportunity to speak to the application before he asked the board to make that determination.

Tony Corraire spoke to the fact that the applicant had agreed to take out the jog in the lot at the prior meeting. From a point of order the board should have determined first whether there had been a significant change to the application first and then let the abutters voice their objections.

Mr. Fontneau would like to get input from board members. The reason he proceeded the way he did was according to the rules of the board they must accept an application as complete before they can open a public hearing.

Mr. Walker stated that the way he stated his motion was as a new application and he worded it that way because he does feel it warrants a substantial change.

Mr. Fontneau asked if there were no objections from the board he would continue with the public hearing.

Mr. Sylvain clarified that the application that had been denied at the last meeting, was denied as presented and did not include the removal of any jogs or changes that were talked about during the meeting.

Mr. Peters confirmed the application had been denied as presented.

Mr. Fontneau stated the reasons for denial did not refer to the jog or shed but he had heard significant discussion regarding the jog during the meeting and that is why he felt this was open for discussion this evening.

Mr. Fontneau continued the public hearing.

Dan Harkinson, 15 Nature Lane, his wife owns lots 40 and 40-1. One of his concerns is that this lot had always existed as a single family lot. If the board approves this there are lots that allow for future development. This neighborhood has been 50 years in existence. The board has a responsibility to look after the people that are already there. The board has to either allow everyone who comes before them to do this or they have to decide this has been fifty years in existence this way and we are going to leave it that way.

Ninno Leccacorvi of 6 Dartmouth Lane, The neighborhood has been there for 70 years and all the lots are uniform. The applicant is subdividing and moving they don't care.

Clayton Harrington has 400 feet on Dartmouth Lane and wouldn't think of splitting his property. The only one making money on this is Norway Plains.

Jane Cooper Fall talked about the history of the neighborhood and how the large homes were built by G.E. executives.

Don Carrigan of 13 Sunset Drive, the major issue the board needs to address is, what is a material change. He would not consider this a material change. The original size of the lot has not changed significantly.

Tony Corrain has become disappointed with the Planning Board and ZBA because as of late they have given little care to the neighborhoods. The neighborhood is here because they are concerned. The City does not have control over quality. To think someone who is paying \$100,000 for a lot is not going to build a \$100,000 home is speculative. The applicant is looking to sell. The board has a duty to the neighborhood and asks the board to deny.

Arnold Bennett talked about how 13 years ago Barbara Marsh brought my wife and me onto the property and it was beautiful. When the hospital expansion went in he was concerned about his property. He didn't sell. You can not speculate on what may be built.

Nino Leccacorvi wished to bring up a statement made by a board member at the last meeting. It is unlikely a board would approve a new subdivision with 9 one acre lots and one 10,000 square foot lot. This speaks to discretion and that is what we are asking the board to use.

Robert Garland of 9 Sunset Drive was here a month ago and stood before the board with the neighborhood and he does not feel anything has changed since that time. No one in the neighborhood is here in support of this but the applicants, and they are moving, he hopes that the board will consider that and reject the proposal tonight.

A motion was made by Mr. Sylvain and seconded by Mr. Gray to close the public hearing. The motion carried unanimously.

Mr. Fontneau wished to hear from the board regarding “material change”, would like to get a conscious from the board.

Mr. Gray stated that the motion to deny the application last month stated the motion to deny is based on the application fails to meet the purpose of the zoning ordinance, adversely impacts the character of the neighborhood and fails to conserve the value of the neighborhood. In his opinion the changing of that lot line does not change anything that was in that motion.

A motion was made by Mr. Gray and seconded by Mr. Sylvain to deny the application based on the fact there was not a material change from the first application.

Roll Call Vote

| | |
|------------------|-----|
| Tom Abbott | No |
| Rick Healey | No |
| Gloria Larochele | Yes |
| John Meader | No |
| Dave Walker | No |
| James Gray | Yes |
| Derek Peters | Yes |
| Nel Sylvain | Yes |
| Tim Fontneau | No |

The motion fails 4-5

Mr. Fontneau then opened the floor up for discussion. He feels this is one of the more difficult votes. At face value it appear to meet all the regulation but there have been a lot of good arguments about the quality of the neighborhood and the affect on property values. There are a number of large single story homes and two story homes and to simply divide the lot with no conditions protecting the quality of the neighborhood would not be right. It would have been in the best interest if all parties had come together outside of this meeting and could have come together and agreed upon what this property was going to look like.

Mr. Peters does not feel the lot frontage fits with either the core of the neighborhood or even the entire neighborhood. He does not care that they moved the line.

Art Nickless asked Mr. Fontneau if he could speak.

Mr. Fontneau allowed him to speak.

Mr. Nickless discussed the fact that there had been some very eloquent speakers this evening and they have been telling the board that it does not matter what the zoning ordinance says, that they should look at the neighborhoods and what the neighborhood wants and what the neighborhood

like. When they talk about harmonious development they are talking about how you go about writing your zoning ordinance. He warned the board that if they started approving applications on what the neighborhood wanted and not on the zoning ordinance there would be a lot of work for the local attorneys.

Mr. Sylvain called for a point of order and said he does not like being threatened with lawyers.

Mr. Nickless stated he was not threatening anyone, he was just saying you can not make decisions based on your gut. Ninety five percent of the applications he brings before the board have a half dozen abutters who do not want the project to go forward and if you start basing your decision on that basis alone, I do not know how you are going to continue to review applications.

Mr. Fontneau understands what Mr. Nickless is saying and that there have been changes in the lots even in the core, since the neighborhoods inception. His concern is not so much the creation of the lot but what could be built there.

Attorney Schulte stated the applicant would accept a condition that no modular home is to be placed on the lot. There is a broad range of home styles in the neighborhood and does not want it restricted beyond that. The investor is going to want a home that is fitting with the neighborhood.

A motion was made by Ms. Larochelle and seconded by Mr. Gray to deny the application because it fails to meet the purpose of the zoning ordinance, adversely impacts the character of the neighborhood and fails to conserve the value of the neighborhood.

Roll Call Vote

| | |
|-------------------|-----|
| Tom Abbott | No |
| Rick Healey | No |
| Gloria Larochelle | Yes |
| John Meader | No |
| Dave Walker | No |
| James Gray | Yes |
| Derek Peters | Yes |
| Nel Sylvain | Yes |
| Tim Fontneau | No |

The motion fails 4-5

A motion was made by Mr. Healey and seconded by Mr. Walker to approve the application with no modular allowed (and the finished interior living space shall not be less than 1800 square feet).

Mr. Fontneau would like to see further restriction on what could be built there.

Jim Schulte stated that the applicant would agree to a further restriction of a living area not to include garages basements, breezeways, decks, etc. of not less than 1800 square feet.

The motion is amended to read to include the finished interior living space shall not be less than 1800 square feet.

Roll Call Vote

| | |
|------------------|-----|
| Tom Abbott | Yes |
| Rick Healey | Yes |
| Gloria Larochele | No |
| John Meader | Yes |
| Dave Walker | Yes |
| James Gray | No |
| Derek Peters | No |
| Nel Sylvain | No |
| Tim Fontneau | Yes |

The motion carried 5-4

Other Business

Councilor Varney and Councilor Labranche, representing some of their constituents addressed the board regarding Lambert’s Auto Salvage. Mr. Varney explained to the board that there had been a number of issues over the last couple of years with the abutters regarding noise, hours of operation, and dust. Lambert’s has been issued a letter from the City telling them this is a nonconforming use. Lambert’s is in violation for not receiving permits for construction which has recently taken place. Lambert’s has been there a long time but the use has changed. He believes the construction which has taken place has been to accommodate the crusher for the recycling of metals.

He would like to request that the board move this to a full site review so that there would be a public hearing and the abutters would be given a chance to air their concerns. He knows there is a minor site review scheduled for tomorrow but the business will be closed and it would be hard to get an idea of the abutters concerns if the business is not in operation. He is also not sure how many of the abutters are planning to attend.

Councilor Varney also asked the board to spend some time on as to what a nonconformance is. Bernie Waugh has an excellent article he has written on the subject and he asks the board to read it. It addresses what can and can not be done. He is asking that this get bumped up from a minor site to a full site review to give the abutters a chance to explain some of the issues they have had and maybe we will have some answers to these issues by then.

Mr. Abbott recused himself from this discussion because he had issued the letter of violation.

Mr. Behrendt gave an explanation of the difference between a minor site review and a full planning board review.

Mr. Peters wanted to know why the business was closed.

Mr. Fontneau said that he understands that according to the applicant's lawyer it is for safety reasons.

Mr. Sylvain wanted to know if it was possible to get this on the agenda for a full review on the 15th.

Mr. Varney discussed how none of this complies with zoning and that in itself should have prevented this from being considered as a minor site.

A motion was made by Mr. Sylvain and seconded by Mr. Healey to bump this to a full planning board review and get this into an acceptable paper.

This did not need to be voted on as any member of the board could bump a minor site to a full board review.

Mr. Peters wants to see the business in operation.

Mr. Peters would also like to give the applicant as well as the abutters a chance to speak and address the issues.

The application will now be heard on November 15, 2010 and the abutters will be notified and a public hearing posted.

Councilor Labranche and Councilor Varney would like to be kept informed of any changes in the schedule and also would like to receive any information that the board members get.

*A motion was made by Mr. Sylvain and seconded by Mr. Walker to adjourn at 9:52 p.m.
The motion carried unanimously.*

The Comprehensive Rezoning was postponed for review at a later date.

Respectfully submitted,

Marcia J. Gasses
Planning Secretary
(These minutes were transcribed from notes)